

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN



ELECTRONIC FILING POLICIES AND PROCEDURES

**Gerald E. Rosen
Chief Judge**

Revised March 2010

PREFACE

In December 2002, the Administrative Office of the United States Courts advised the Eastern District of Michigan that it had been identified to begin implementation of Case Management / Electronic Case Files (CM/ECF) in January 2003.

On December 18, 2002, Chief Judge Lawrence P. Zatkoff approved a recommendation from the Court's Automation and Technology Committee and appointed an *Ad Hoc* Committee on Electronic Filing. The Committee's charge was to discuss and recommend to the Court a position on various policy issues underlying the creation of a new Local Rule governing electronic filing.

At its regular meeting on September 8, 2003, the Court approved Local Rules [<http://www.mied.uscourts.gov/Rules/RuleViewer.cfm?n=LR%205.1.1>] establishing the authority for electronic filing in civil and criminal cases in the Eastern District of Michigan. The Court also agreed that papers filed by electronic means must comply with the technical standards in the Electronic Case Filing (ECF) Policies and Procedures (this document), which is also included as an appendix to the Local Rules. This document was approved by the Court at its regular meeting on December 1, 2003.

At its regular meeting on February 2, 2004, the Court approved a delay in the implementation date of ECF from March 1, 2004, to June 1, 2004. At its meeting on September 6, 2005, the Court approved amendments to LR 5.1.1, which mandated that all papers - not simply cases - filed after November 30, 2005, be filed electronically.

In anticipation of mandatory e-filing, the Court also approved mandatory training for all ECF filing users effective September 19, 2005.

The Court expresses its appreciation to the original members of the *Ad Hoc* Committee on Electronic Filing who worked diligently on this document:

Chief Judge Lawrence P. Zatkoff (Ex Officio)
Judge Robert H. Cleland, Chair
Judge Arthur J. Tarnow
Judge Victoria A. Roberts
Judge David M. Lawson
Magistrate Judge Charles E. Binder
Attorney Daniel J. LaCombe (Barris, Sott, Denn & Driker, PLLC)
Attorney Patrick G. Seyferth (Bush, Seyferth & Kethledge)
Assistant United States Attorney Sheldon N. Light
Deputy Federal Defender Andrew N. Wise
Court Administrator David J. Weaver
Deputy Court Administrator Mary E. Miers (ECF Project Manager)
Operations Manager Kevin B. Williams
Management Analyst Jerri Torolski
Secretary to Court Administrator Stephanie Miskowski (Reporter)

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Introduction

As of June 1, 2004, the official record of filed cases shall be maintained electronically. These policies and procedures set forth the scope and requirements for filing users.

R1 Definitions

The following terms appear in these Electronic Filing Policies and Procedures:

- (a) “E-Government Act of 2002” establishes a broad framework for the use of technology to enhance public access to government information and services. Pub. L. No. 107-347, 116 Stat. 2899. See 44 U.S.C. §§ 3601, et seq.
- (b) “Electronic Filing” means filing a paper over the Internet by a registered attorney or a non-incarcerated *pro se* party.¹
- (c) “Electronic Filing System” (hereinafter ECF) refers to the Court's automated system that receives and stores papers filed in electronic form. The program is part of the CM/ECF (Case Management/Electronic Case Files) software, which was developed for the Federal Judiciary by the Administrative Office of the United States Courts.
- (d) “Filing User” is a registered attorney or a *pro se* party who has a district court-issued login and password to file papers electronically over the Internet in the Eastern District of Michigan. *Pro se* party refers to a non-incarcerated person only.
- (e) “Hyperlink” is a selectable connection from a word, picture, or information object to another, providing a mechanism for navigating to information between or within electronic documents or to Internet material. Hyperlinks are activated when the user clicks on an “active” region on the document.

¹ Filing users are directed to Fed. R. Civ. P. 5(d) and E.D. Mich. LR 26.2 regarding the prohibition of filing certain papers.

The active region is usually indicated by the highlighting or underlining of text.

- (f) “Initiating Papers” are comprised of the following: civil complaints, statements of disclosure of corporate affiliations and financial interest, notices of removal, criminal complaints, indictments or informations, and any other document filed with the Court that creates a new case and new case number on the Court's docket.
- (g) “Notice of Electronic Filing” (hereinafter NEF) is a notice automatically generated by ECF at the time a paper is filed, setting forth the time of filing, the name of the filing user, the type of paper, the text of the docket entry, the name of the filing user receiving the notice, and an electronic link (hyperlink) to the filed paper, which allows recipients to retrieve the paper automatically.
- (h) “Paper” is defined as a pleading, motion, exhibit, declaration, affidavit, memorandum, order, notice, and any other filing by or to the Court.
- (i) “Portable Document Format” (hereinafter PDF) refers to a non-modifiable, electronic file that is converted to a format that will look the same on a computer screen and in print, regardless of the printer used to print it, and regardless of the software package originally used to create it. [see R5(c)]
- (j) “Proposed Order” is a draft paper submitted for a judge's editing, if necessary, and signature, in a format compatible with WordPerfect and not in PDF. [see R11(a)]
- (k) “Public Access to Court Electronic Records” (hereinafter PACER) is an automated system that allows any individual to view, print and download

Court docket information over the Internet.

- (l) “Technical Failure” is defined as a malfunction of Court-owned/leased equipment (e.g., hardware, software or telecommunication facility) that occurs continuously or intermittently for more than one hour after 12:00 noon (Eastern Time) that day, and which results in the inability of a filing user to file papers electronically. Technical failure does not include malfunctioning of a filing user's equipment.
- (m) “Text-Only Order” is a docket entry that itself constitutes the order. These text-only orders, which are generally only used for routine matters, are official and binding.
- (n) “Traditional Manner” means filed on paper (hard copy) at a Clerk’s Office [see R7].

R2 Scope of Electronic Filing

All papers (not simply cases) filed June 1, 2004 and thereafter will be maintained as electronic case files no matter when a case was originally filed. All filings are subject to the exceptions noted in R7.

R3 Eligibility, Registration, Passwords

(a) A filing user must be an attorney admitted and in good standing to practice in the Eastern District of Michigan, an attorney authorized to represent the United States Government, or a non-incarcerated *pro se* party granted access permission.

(1) Attorneys already admitted to practice who have a case pending before the Court must immediately comply with (b).

(2) Newly-admitted attorneys who have a case pending before the Court

at the time of admission have up to two weeks to comply with (b). Newly-admitted attorneys do not need to comply with (b) until such time as the attorney has a case pending before the Court.

(b) Each filing user must complete and submit the ECF Registration Form <https://secure.mied.uscourts.gov/CMECF/AttorneyReg/>. Effective September 19, 2005, filing users must complete mandatory ECF Training.

(c) Each filing user is responsible for maintaining valid contact information in his or her ECF Registration account profile. When a user's contact information changes, the user must promptly update his or her ECF Registration account profile. If the filing user has a pending case before the Court, the user must also promptly notify all parties in all cases. Electronic service upon an obsolete e-mail address will constitute valid service if the user has not updated the account profile with the new e-mail address.

(d) A filing user must have a PACER account.

(e) Once the above requirements have been met, the Clerk will issue a login and password.

R4 Non-Compliance

(a) The Court may excuse a party from electronic filing on motion for good cause shown. [LR 5.1.1(a)]

(b) The Court may issue an order to show cause for repeated filing errors or other instances of non-compliance with these Policies and Procedures. The Court may also subject a filing user to sanctions in accordance with LR 11.1. See Procedure to Address Non-Compliance with ECF Policies and Procedures (EXHIBIT G).

R5 Filing - In General

(a) Filing users are required to file papers² electronically [see R6 and R7 for exceptions] beginning December 1, 2005.

(b) Effective January 8, 2007, filing users must present one “courtesy” or “chambers copy” of all dispositive motion papers, as defined in LR 7.1(e)(1)(A), (including responses and replies) and all accompanying exhibits must be submitted directly to the judge’s chambers on paper. Any exhibits must be properly tabbed and all papers firmly bound, usually along the left margin (“book-style”). Good practice requires that in appropriate cases, relevant portions of lengthy documents be highlighted. A printed copy of the Notice of Electronic Filing must be attached to the front of the paper.

The chambers copy must be sent via first class mail the same day the document is e-filed, unless it relates to a court proceeding scheduled within the next five days or otherwise requires the immediate attention of the Court, in which case the chambers copy must be hand-delivered to chambers not later than the morning of the next business day after the document is e-filed.

(c) A file created with a word processor, or a paper that has been scanned, must be converted to PDF to be filed electronically with the Court. Converted files contain the extension “.pdf”. All fonts embedded in PDF records (except in papers that have been scanned) must have been publicly identified as a font that may be legally imbedded (i.e., the font license permits embedding) in a file for unlimited, universal viewing and printing [font styles, which are the most commonly used fonts for document production: Courier

² Filing users are directed to Fed. R. Civ. P. 5(d) and E.D. Mich. LR 26.2 regarding the prohibition of filing certain papers.

(Regular, Bold, Italic, and Bold Italic), Arial MT (Regular, Bold, Oblique, and Bold Oblique), Times New Roman PS MT (Roman, Bold, Italic, and Bold Italic), Symbol, and ZapfDingbats]. [see R1(i)]

(d) A hyperlink [as defined in R1(e)] contained in an electronic filing is merely a convenient mechanism created by the author for accessing Internet material. A hyperlink is not a part of the Court's record. Accordingly, the Court does not endorse nor exercise any responsibility over the content at the destination. Any hyperlink to a case or other authority included in an electronic filing must be expressed in the full traditional citation method for the cited authority. If a cited Internet resource is fundamental to the paper and refers to information that has not already been made part of the record, the Internet material must be captured, preserved in PDF, and attached to the paper. The attachment should include a notation of the date it was viewed and the case to which it relates.

(e) A complaint must not be combined with a motion for preliminary relief and a response or reply to a motion must not be combined with a counter-motion. Papers filed in violation of this rule will be stricken.

(f) Papers containing advertisements, which may be generated as a result of the use of free or trial-run PDF conversion software, will be stricken.

R6 Filing - Initiating Papers

(a) The filing of civil initiating papers, issuance and service of the summons, and payment of initial filing fees may be done electronically until July 31, 2008, and must be done electronically beginning August 1, 2008. A case is not considered filed until an initiating paper has been uploaded and a judicial officer has been assigned to the case.

(b) The filing of criminal initiating papers (e.g., criminal complaints, indictments, or informations) must be accomplished in the traditional manner.

(c) Corporate plaintiffs must file the Statement of Disclosure of Corporate Affiliations and Financial Interest in accordance with LR 83.4, along with initiating papers. Corporate defendants in either civil or criminal cases should e-file the Statement as one of the first pleadings or papers filed with the Court, or as soon as the party becomes aware of the corporate affiliation or financial interest, or as otherwise ordered by the judge to whom the case is assigned.

R7 Other Exceptions to Filing Electronically

The following papers must be filed in the traditional manner:

- (a) sealed criminal papers,
- (b) papers submitted *in camera*, and
- (c) warrants issued.

R8 Service

(a) Fed. R. Civ. P. 5(b) and Fed. R. Crim. P. 49(b) do not permit electronic service of process for purposes of obtaining personal jurisdiction, i.e., Rule 4 service. Therefore, service of process must be effected in the traditional manner.

(b) Whenever a paper is filed electronically in accordance with these procedures, ECF will generate a NEF to all filing users associated with that case and to the judge to whom the case is assigned.

(c) If the recipient is a filing user, the NEF shall constitute service of the paper as if by first class mail. If two or more attorneys appear on behalf of a party, service on one

of the attorneys shall be sufficient, unless otherwise required by law.

(d) A certificate of service on all parties entitled to service or notice is still required when a party files a paper electronically. The certificate must state the manner in which service or notice was accomplished on each party so served. This should be included as part of the paper rather than a separate filing. See Sample Certificate of Service (EXHIBIT A).

(e) A party who is *pro se* and not a filing user, or a party excused from electronic filing, is entitled to a hard copy of any paper filed electronically. Service of such copy must be made according to the federal rules of procedure (civil and criminal) and local rules. Unless otherwise ordered by the Court, an attorney who is not a filing user is not entitled to this traditional service.

R9 Signatures

(a) The user login and password serve as the filing user's signature on all papers filed electronically with the Court. They serve as a signature for purposes of Fed.R.Civ.P. 11, all other federal rules (civil and criminal), the local rules, and for any other purpose for which a signature is required in connection with proceedings before the Court.

(b) A paper filed electronically must include a signature block containing the name of the filing user represented by "s/", "/s/" or a scanned signature, firm name (if applicable), street address, telephone number, primary e-mail address, and bar ID number (where applicable). The format of the signature block should substantially conform to the following sample:

SAMPLE: s/Christopher Adams
 Adams, Adams & Adams P.C.
 123 Main Street
 Detroit, MI 48200
 (313) 555-1234
 cadams@adamslaw.com
 P12345

(c) A paper containing the signature of a defendant in a criminal case shall be scanned and filed by filing users or Court personnel.

(d) An affidavit, declaration or paper containing the signature of a non-attorney shall be scanned and filed electronically.

(e) A paper requiring the signature of more than one party shall be filed electronically by:

- (1) submitting a scanned paper containing all necessary signatures, or
- (2) representing the consent of the other parties on the paper by including the name of the consenting party in a separate signature block as shown in the following sample;

SAMPLE: s/ with consent of Morgan Davis
 Law Office of Davis & Davis
 456 Mockingbird Lane
 Ann Arbor, MI 49888
 (734) 555-6789
 mdavis@DavisDavis.com
 P23456

or

- (3) in any other manner approved by the Court.

R10 Entry of Court-Issued Papers

(a) All signed orders will be filed by Court personnel. Any order signed electronically (with s/judge's name) shall have the same force and effect as if the judge had affixed his or her signature to a hard copy of the order and it had been entered on the docket in the traditional manner.

(b) The judge to whom a case is assigned may issue routine text-only orders for which ECF will generate a NEF. For text-only orders, no PDF paper will be issued; the text-only order entry shall constitute the Court's only order on the matter. In civil cases, such orders may include but are not limited to orders setting or modifying a schedule, orders extending time, and orders granting leave to file papers. In criminal cases, such orders could include orders of dismissal filed under Fed. R. Crim. P. 48(a) and orders unsealing documents.

R11 Proposed Orders

(a) Proposed orders [see R1(j)] must be submitted to the judge to whom the case is assigned or to the magistrate judge to whom the matter is referred via the link located under the Utilities section of CM/ECF. This link may not be used for any other purpose.

(1) If the movant (filing user) obtains concurrence pursuant to E.D. Mich. LR 7.1(a)(1), the proposed stipulated order must be submitted via the link referred to in (a).

(2) If concurrence is obtained and the movant (filing user) prepares a separate stipulation and separate proposed order, the stipulation must be submitted with the proposed order via the link referred to in (a), unless:

(i) the stipulation requires the signature of a *pro se* party who is not a filing user or a non-attorney, in which case the stipulation is to be electronically filed and the proposed order submitted via the link referred to in (a); or

(ii) the stipulation is regarding trial exhibits for appeal purposes and does not require an order signed by a district or magistrate judge.

(3) Proposed orders shall not be combined with *ex-parte* motions. The *ex-parte* motion must be filed electronically first and the proposed order must be submitted via the link referred to in (a).

(4) An exception to the submission of proposed orders via the link referred to in (a) is found in E.D. Mich. LR 58.1(c).

(b) The movant (filing user) must provide all other parties a copy of the proposed order either by e-mail or other form. CM/ECF does not automatically generate an NEF or a copy of the proposed order for them.

(c) Alternatively, a motion or stipulation may request that routine relief be granted by text-only order. Such orders are official and binding.

R12 Docket/Official Court Record

A paper filed electronically in accordance with these policies and procedures shall constitute entry of that paper on the docket kept by the Clerk under Fed. R. Civ. P. 58 and 79, and Fed. R. Crim. P. 55.

R13 Technical Failure of Court Equipment; Malfunction of Filing User's Equipment

(a) If a filing user encounters technical failure of Court equipment [as defined in R1(l)], the paper may be submitted to the Court as indicated below, provided that it is

accompanied by an affidavit of the filing user's failed attempts to file electronically at least two times after 12:00 noon, each attempt separated by at least one hour. The following methods of filing are acceptable in the case of a technical failure:

(1) Via e-mail sent that day with PDF attachment to the e-mail address for technical failures (technicalfailures@mied.uscourts.gov); or

(2) Via electronic filing the next business day that ECF is operational.

(b) A filing user who suffers prejudice as a result of a malfunction of the filing user's own equipment may seek appropriate relief from the Court.

R14 Correcting Docket Entries Including Papers Filed in Error

Once a paper is filed electronically and becomes part of the docket, corrections to the docket may be made only by the Clerk's Office. If a paper is filed in error, the filing user must seek appropriate relief from the Court.

R15 Deadlines

(a) A paper filed electronically is deemed filed on the date and time stated on the NEF.

(b) Filing electronically does not alter the filing deadline for a paper. Filing users are encouraged to file electronically during ordinary business hours; however, filing electronically must be completed before 12:00 midnight (Eastern Time) in order to be considered timely filed that day, unless a technical failure [see R13(a)] or malfunction of filing user's equipment occurs [see R13(b)]. In accordance with Fed.R.Civ.P. 6(d) and Fed.R.Crim.P. 45(c), service by electronic means is treated the same as if by first class mail.

R16 Transcripts of Federal Court Proceedings

(a) Transcripts of federal court proceedings will be filed electronically in CM/ECF by the court reporter or transcriber.

(b) Access to transcripts of federal court proceedings will be governed by the Court's Procedures Governing the Electronic Availability and Redaction of Transcripts (EXHIBIT F).

R17 Retention Requirements

The official Court record shall be the electronic file maintained on the Court's servers and any papers allowed to be filed in the traditional manner. The Clerk's Office will discard all papers brought to the Clerk's Office for entry on the docket after those papers are scanned and uploaded to ECF. Therefore, the Court encourages filing users to retain the originals of papers with intrinsic value.

R18 Exhibits

(a) In General

An exhibit available in original electronic format must be converted to PDF and filed electronically, subject to size limitations contained herein. A filing user must scan a paper exhibit that is less than 5 megabytes (5 megabytes equals approximately 80 pages of conventional text - filing users are directed to file only portions of exhibits that are germane and not include any paper that is already part of the record) and submit the exhibit as a PDF file. Because PDF files containing scanned papers take up considerably more space on ECF than PDF files containing electronically-generated papers, filing users may submit PDF files containing scanned papers of more than 5 megabytes only if they

are filed in separate 5 megabyte segments.

The offering party shall retain hard copies, or accurate electronic copies, of exhibits until entry of final orders by the District Court and, if applicable, appellate courts.

(b) Filing Exhibits to Papers Electronically

Exhibits must be filed electronically according to the following procedure:

(1) If there is only one exhibit, an index of exhibits is not necessary.

(2) The filing user must prepare an index of exhibits and file the index as the first attachment to the paper. Each exhibit must be described on the index both by an exhibit identifier and by a brief narrative description. See Sample Index of Exhibits (EXHIBIT B).

(3) Each exhibit must then be filed and identified as a separate attachment to the paper, and must be labeled in the electronic record with an exhibit identifier and brief narrative description.

SAMPLE DOCKET ENTRY: Motion for Summary Judgment filed by ABC Company (Attachments: #1 Index of Exhibits #2 Exhibit A - Affidavit of John Smith #3 Exhibit B - Excerpts from Jane Doe's Deposition #4 Exhibit C1 - Contract Between XYZ Company and ABC Company, pages 1-35 #5 Exhibit C2 - Contract Between XYZ Company and ABC Company, pages 36-69 #6 Exhibit D - XYZ Company General Ledgers)

(c) Video Tapes, DVDs and Physical Objects

A filing user must obtain leave of court to file in the traditional manner exhibits that are physical objects that cannot authentically be converted to PDF as required in R18(a). Examples include but are not limited to media files such as .mp3 and .wav and objects such as oversized maps and blueprints. CDs and DVDs that contain files such as

briefs, motions, and exhibits that can be authentically converted to PDF shall not be submitted. See Ex Parte Motion for Leave to File Exhibits in the Traditional Manner (EXHIBIT C). If the Court grants a filing user leave of court to file exhibits in the traditional manner, the Notice of Filing Exhibits in the Traditional Manner (EXHIBIT D) must be completed and accompany the filing. The exhibits then must be filed according to the following procedures:

(1) The filing user must prepare an index of exhibits. This index must be filed as an attachment to the main paper and must state that the exhibits are being filed in the traditional manner rather than electronically.

(2) The filing user shall file the exhibits in the traditional manner accompanied by a cover sheet identifying the paper to which the exhibits relate (e.g., “Exhibits in Support of Defendant XYZ Company's Memorandum in Support of Motion for Summary Judgment”). Objects must have a label physically attached that include case number and description. The Clerk's Office will note on the docket its receipt of the exhibits.

(3) A filing user must serve materials filed in the traditional manner on other parties in accordance with the federal and local rules, and file a notice electronically [see R8(d)].

R19 Access To Papers in ECF

(a) Subject to the “Transcript of Court Proceedings” section, a person may retrieve information from ECF at the Court’s Internet site by obtaining a PACER login and password. A person who has PACER access may retrieve the docket and papers in civil

cases, except immigration and social security benefits cases. In immigration and social security benefits cases, only counsel of record or parties in the case may retrieve papers.

Judicial Conference of the United States policy prohibits routine public access via the Internet of immigration and social security benefits cases.

(b) A person who has PACER access may retrieve the docket and papers filed after November 1, 2004 in a criminal case. However, only counsel of record in a case, or a *pro se* defendant with PACER access, may retrieve papers filed before November 1, 2004.

R20 E-Government Act of 2002

Effective December 1, 2007, privacy protection for filings made with the Court is governed by Fed.R.Civ.P. 5.2 and Fed.R.Crim.P. 49.1. To supplement the federal rules, the Court has entered an administrative order (EXHIBIT E) which makes it clear that counsel and the parties are responsible for redacting filings with the Court. The Clerk's Office will not review papers for compliance with the federal rules.

CERTIFICATE OF SERVICE

I hereby certify that on _____, I electronically filed the foregoing paper with the Clerk of
[Date]
the Court using the ECF system which will send notification of such filing to the following: _____

_____, and I hereby certify that I have mailed by United States Postal
Service the paper to the following non-ECF participants: _____

s/Name of Filing User
Firm Name (if applicable)
Street Address
City, State, Zip Code
Telephone Number
Primary Email Address
Attorney Bar No. (if applicable)

EXHIBIT A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

SAMPLE INDEX OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
A	Affidavit of John Smith
B	Excerpts from Jane Doe's Deposition
C-1	Contract Between XYZ Company and ABC Company (Part 1, Pages 1-35)
C-2	Contract Between XYZ Company and ABC Company (Part 2, Pages 36-69)
D	XYZ Company General Ledgers

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Plaintiff(s),

Case No.

v.

Judge

Magistrate Judge

Defendant(s).

_____ /

**EX PARTE MOTION FOR LEAVE TO FILE
EXHIBITS IN THE TRADITIONAL MANNER**

NOW COMES the undersigned _____,
and pursuant to the Electronic Filing Policies and Procedures, seeks leave of this Court to file
exhibits in the traditional manner.

The exhibits to _____
cannot be authentically converted to electronic form for the following reason(s): _____

_____.

For the foregoing reasons, the undersigned respectfully requests that this Court grant the
leave sought in this motion.

Date: _____ s/Name of Filing User _____

Firm Name (if applicable)
Street Address
City, State, Zip Code
Telephone Number
Primary Email Address
Attorney Bar No. (if applicable)

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

Plaintiff(s),	Case No.
v.	Judge
	Magistrate Judge
Defendant(s).	
_____ /	

NOTICE OF FILING EXHIBITS IN THE TRADITIONAL MANNER

Please take notice that the undersigned has filed exhibits to the following paper in the traditional manner.

Leave of Court was previously granted on _____ by the
[Date]
above judicial officer.

Title of Paper: _____

The exhibits have been served in hard copy on all parties pursuant to federal and local rules.

Date: _____

s/Name of Filing User
Firm Name (if applicable)
Street Address
City, State, Zip Code
Telephone Number
Primary Email Address
Attorney Bar No. (if applicable)

EXHIBIT D

FILED

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

2007 NOV 30 P 2:42

U.S. DIST. COURT CLERK
EAST. DIST. MICHIGAN
DETROIT

In re: Federal Rules Governing
Privacy Protection for Filings
Made with the Court -
Responsibility for Redaction

Administrative Order

No. 07-AO- 030

ADMINISTRATIVE ORDER

It appearing that privacy protection for filings made with this Court have been governed by Administrative Orders 05-AO-025 (civil) and 05-AO-026 (criminal); and

It further appearing that new federal rules, Fed.R.Civ.P. 5.2 and Fed.R.Crim.P. 49.1, governing privacy protection for filings made with the Court will take effect on December 1, 2007, absent contrary Congressional action;

NOW THEREFORE IT IS ORDERED that counsel and the parties are responsible for redacting filings with the Court. The Clerk's Office will not review papers filed with the Court for compliance with the federal rules.

This administrative order supersedes Administrative Orders 05-AO-025 and 05-AO-026 in their entirety, and remains in effect until amendments to the appropriate local rule have been approved by the Court.

IT IS ORDERED.

FOR THE COURT:


Bernard A. Friedman
Chief Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

**PROCEDURES GOVERNING THE ELECTRONIC AVAILABILITY
AND
REDACTION OF TRANSCRIPTS**
(Revised September 2009)

A. Authority

At its September 2007 session, the Judicial Conference of the United States approved a new policy regarding the availability of transcripts of courtroom proceedings. The language from that session states:

- (1) A transcript provided to a court by a court reporter or transcriber will be available at the office of the clerk of court for inspection only, for a period of 90 days after it is delivered to the clerk.
- (2) During the 90-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference, the transcript will be available within the court for internal use, and an attorney or party who obtains the transcript from the court reporter or transcriber may obtain remote electronic access to the transcript through the court's CM/ECF system for the purposes of creating hyperlinks to the transcript in court filings or for other purposes.
- (3) After the 90-day period has ended, the filed transcript will be available for inspection and copying in the clerk's office and for downloading from the court's CM/ECF system through the judiciary's PACER system.

In addition, amendments to the Federal Civil and Criminal Rules of Procedure that took effect on December 1, 2007, require that personal identification information be redacted from documents filed with the court - individuals' Social Security numbers, names of minor children, financial account numbers, dates of birth, and, in criminal cases, home addresses.

B. Procedures

These procedures apply to all transcripts of federal court proceedings, or parts of federal court proceedings, filed by official court reporters, contract court reporters, and transcribers.

The responsibility to review the transcripts and request redactions, if necessary, rests solely with the attorneys and parties to the case.

EXHIBIT F

Nothing in these procedures creates a private right of action against the court, the official court reporter, the contract court reporter, or transcriber.

1. Transcripts of federal court proceedings, or parts of federal court proceedings, will be filed electronically in CM/ECF by the court reporter or transcriber. Transcripts will not be made electronically available for 90 calendar days from the date of filing, however they may be viewed at the clerk's office using the public terminal. CM/ECF will calculate the release of transcript restriction deadlines.

2. Upon receipt of payment from the ordering party, the court reporter or transcriber will grant the attorney or party electronic access to the transcript in CM/ECF. If the transcript is ordered by a Federal Government agency, the agency will be granted access to the transcript in CM/ECF upon its completion.

3. Any attorney or party needing to review the transcript for redaction purposes may purchase a copy from the court reporter or transcriber, or view the transcript at the clerk's office using the public terminal.

4. Once a prepared transcript is filed with the clerk's office, the attorneys or parties in the case are responsible for reviewing it for the personal data identifiers required by the federal rules to be redacted, and providing the court reporter or transcriber with a statement of the redactions to be made to comply with the rules. Attorneys and parties must request the redaction of the following personal data identifiers:

- Social Security numbers (or taxpayer identification numbers) to the last four digits;
- financial account numbers to the last four digits;
- dates of birth to the year;
- names of minor children to the initials; and
- in criminal cases, any home addresses stated in court to the city and state.

5. Unless otherwise ordered by the court, attorneys and parties must review the following portions of the transcript:

- opening and closing statements made on the party's behalf;
- statements of the party;
- the testimony of any witnesses called by the party;
- sentencing proceedings; and
- any other portion of the transcript as ordered by the court.

6. An attorney serving as "standby" counsel appointed to assist a *pro se* defendant in his or her defense in a criminal case must review the same portions of the transcript as if the *pro se* defendant were his or her client. The attorney conducting the review is entitled

to compensation under the Criminal Justice Act for functions reasonably performed to fulfill the redaction obligation and for reimbursement for related reasonable expenses.

7. Within 21 days from the filing of the transcript, or longer if the court so orders, an attorney or party must submit to the court reporter or transcriber a statement (Redaction Request) indicating where the personal data identifiers appear in the transcript, by page and line number, and how they are to be redacted. A copy must also be filed with the clerk's office. [NOTE: The Court's standard Redaction Request is attached. It is also available on the Court's website.]

8. If an attorney or party wishes to redact additional information, he or she may make a motion to the court within the 21-day period, with a copy served on the court reporter or transcriber. The transcript will not be electronically available until the court has ruled on any such motion, even though the 90-day restriction period may have ended.

9. If redaction is requested, the court reporter or transcriber must, within 31 days from the filing of the original transcript, or longer if the court so orders, perform the requested redactions and file a redacted version of the transcript with the clerk of court. A copy of the redaction request must be retained by the court reporter or transcriber in order to have a record to support the redactions made.

10. The redacted transcript will be available for remote access after 90 calendar days from the date the original transcript was filed. The unredacted, original transcript will be retained by the clerk of court as a restricted document, and will continue to be available at the clerk's office public terminal for viewing only.

11. If, at the end of the 90-day restriction period, there are no redaction documents or motions linked to the transcript, CM/ECF will automatically remove the access restrictions.

12. Transcripts that include voir dire or other juror information will only be available to parties in the case if they are specifically requested. The voir dire transcript will be sealed to ensure a juror's right to privacy. Parties to the case will be required to seek permission of the Court to use the transcript in any other proceeding except an appeal of the same case. Members of the public must receive permission from the judge that ordered the voir dire transcript sealed prior to obtaining a copy of the transcript, and the transcript may be subject to redaction before it is given to any member of the public.

C. Purchase of Transcripts by the Public

Members of the public, including the news media, who purchase a transcript from the court reporter or transcriber within the 90-day restriction period, will not be granted remote electronic access during the restriction period. At the end of the restriction period, the public will be provided remote electronic access to the redacted transcript, or if no

redaction was done, to the transcript originally submitted, unless it is under seal.

If both redacted and unredacted versions exist at the time a transcript is ordered by a member of the public, including the news media, the redacted transcript is the version that should be sold.

D. Redaction Procedures

Court reporters and transcribers may perform the requested redactions manually or with the assistance of various software programs. To manually redact, an “x” should be placed in the space of each redacted character. Regardless of the method used, the page and line numbers of the original transcript must be preserved.

E. Certification of Redacted Transcripts

The title page of the transcript will include a notation of “REDACTED TRANSCRIPT” on a blank line immediately below the case caption and before the volume number and the name and title of the Judge.

At the end of the transcript, and without affecting the page number, the redacted transcript should be certified by the court reporter or transcriber by stating:

“I (we) certify that the foregoing is a true and correct copy of the transcript originally filed with the clerk of court on mm/dd/yy, and incorporating redactions of personal identifiers requested by the following attorneys of record or parties:_____ in accordance with Judicial Conference policy. Redacted characters appear as an “x” (or black box) in the transcript.”

F. Remote Access and PACER Charges

Charges for access through PACER will accrue during and after the 90-day restriction period. Charges will accrue for the entire transcript rather than being capped at 30 pages. The user will incur PACER charges each time the transcript is accessed even though he or she may have purchased it from the court reporter or transcriber and obtained remote access through CM/ECF. There will not be a remote free copy of the transcript. In addition, the transcript policy approved by the Judicial Conference does not provide for a free copy of the transcripts for the Department of Justice at the clerk’s office.

G. Effective Date

These procedures apply to transcripts of court proceedings, or parts of proceedings, filed on or after June 16, 2008.

Attachment

[illegible]

The undersigned understands that redaction of information other than personal identifiers listed below requires an order of the court.

Social Security or taxpayer-identification numbers to the last four digits

Dates of birth to the year

Names of minor children to the initials

Financial account numbers to the last four digits

Home addresses to the city and state (in a criminal case)

The requesting party is responsible for providing a copy of this request to the Court Reporter.

Date: _____

Signature

Bar No.

Street Address

City, State, Zip Code

Telephone Number

Primary Email Address

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

**PROCEDURE TO ADDRESS NON-COMPLIANCE
WITH ECF POLICIES AND PROCEDURES**
(Revised September 2009)

I. Authority

At the May 2007 Judges' Meeting, the Court approved a Procedure to Address Non-Compliance with the ECF Policies and Procedures (Appendix ECF to the Local Rules).

II. Overview

With each e-filing error or instance of non-compliance a Notice of E-Filing Error or Notice of Non-Compliance will be generated and served on the filing user, opposing counsel, and the judge's chambers. Action will be taken after there have been a combined threshold of three occurrences of e-filing errors, or non-compliance, or a combination of the two within a six-month period. The threshold will be met whether three violations occur in a single case or a single violation occurs in three different cases.

With each violation, the offending filing user will receive a Notice of E-filing Error or Notice of Non-Compliance that will identify the problem and the course of action that should be taken. The Notice will caution the offending filing user that sanctions may result from repeated errors and/or instances of non-compliance.

III. Definitions

(A) E-filing Error. Electronically filing a document which violates the local and/or federal rules.

(B) Non-Compliance.

- (1) Registered filing users filing a document in paper without leave of Court.
- (2) Failure to update the Court with current contact information resulting in an e-mail being returned to the Court's electronic mailbox as undeliverable.
- (3) An attorney who is admitted to practice before this Court, and has an active case or cases, but has not registered for electronic filing.
- (4) Any other violation of local and/or federal rules.

(C) Chief Judge's Designee. For purposes of this procedure, the Chief Judge has designated Judge Robert H. Cleland to act for the Court.

IV. Clerk's Office Contact

After the third violation within a six-month period, the offending filing user will be contacted in writing by CM/ECF Help Desk personnel. The offending filing user will be instructed to follow a prescribed course of action appropriate for the violations that have occurred. Appropriate action may include, but not be limited to, completion of online training, a violation warning or direction to review specific online content related to electronic filing. The user will be warned that further violations will be referred to the Chief Judge's designee for further action.

V. Further Violations

Upon the fourth violation within a six-month period, the Chief Judge's designee may issue an Order to Show Cause directing the offending filing user to explain the offending conduct. The Chief Judge's designee may take any remedial action deemed appropriate.

Any additional violations within a six-month period may be considered contempt of court. If held in contempt, an appropriate monetary fine will be imposed.

VI. Newly-Admitted attorneys

Newly admitted attorneys, who have a pending case at the time of admission, have up to two weeks from their admission date to register and otherwise comply with the ECF Policies and Procedures. Attorneys who do not have any active cases pending at the time of admission are not required to register until such time as the attorney has appeared in an active case.

Approved: May 7, 2007
Revised: September 2009

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